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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,606	02/21/2006	Holger Sieben	BM-171PCT	8953
40570	7590	12/15/2008		
FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017			EXAMINER HICKS, ROBERT J	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 12/15/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/541,606	Applicant(s) SIEBEN, HOLGER	
	Examiner ROBERT J. HICKS	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/7/2005</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

Abstract

2. Applicant is reminded of the proper language and format for an abstract of the disclosure:

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

3. The abstract of the disclosure is objected to because of the following: the length of the abstract is 157 words, and the use of the term "said" (Abstract Line 13).

Correction is required. See MPEP § 608.01(b).

Claim Objections

4. Claim 1 is objected to because of the following informality: the phrase "...where the cup is produced in a molding press ..." (Claim 1 Line 4) could be written as "...whereby the cup is produced in a molding press ..." Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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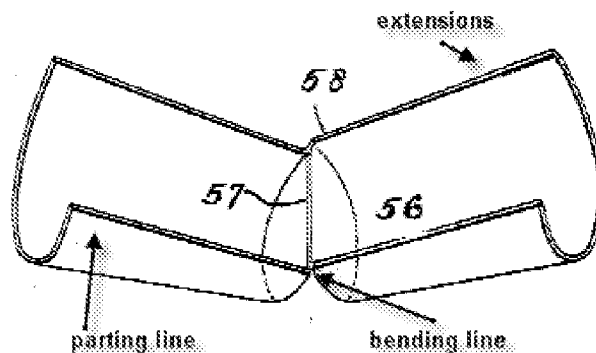
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Schilling (2,800,945).

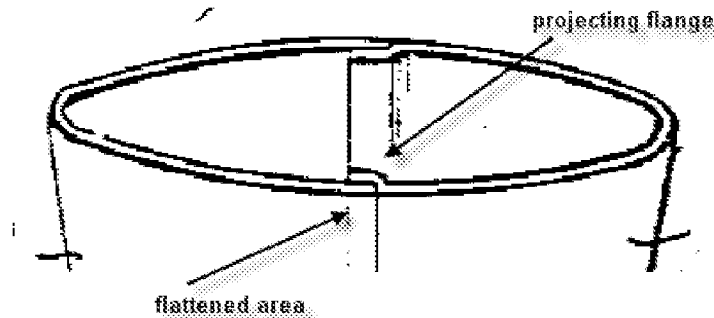
7. Regarding Claim 1, the patent to Schilling – a cup-shaped article and method of manufacture – discloses a cup-shaped molded article (Fig. 17) produced from a flat textile product in the form of non-woven material or needled felt (Col. 2 Lines 17-20, Col. 9 Lines 30-32), whereby the cup is produced in a molding press (Col. 2 Lines 17-20) and is used to fit out motor vehicles, wherein each of the two opposite side walls of the cup has a parting line (Fig. 17), which starts from the opening of the cup and proceeds all the way to the bottom of the cup; in that the parting lines divide the cup longitudinally into two cup segments, which are connected to each other across the bottom of the cup (Fig. 17); in that the inner ends of the two parting lines define between them a bending line (57) in the bottom of the cup; which bending line functions as a fold axis for the bottom, so that the two cup segments can be converted from a folded-out position to a folded-in position; in that the two cup segments, although molded from the flat textile product in two separate areas, are produced simultaneously (Col. 7 Lines 17-20), adjacent to each other, in their folded-open position between the two halves of the press, where the edges of the two parting lines face one of the halves of the press (Fig. 10); and in that in the folded-in position, the parting lines butt up against each other, and the closed cup segments form the finished cup (Fig. 3).

A recitation of the intended use of the claimed invention (“to fit out motor vehicles”) must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The structure of the cup can fit inside of a cup holder within a car, or other motor vehicle.



8. Regarding Claim 2, Schilling discloses the cup segments are attached to each other along their parting lines when in the folded-in position (Fig. 2).
9. Regarding Claim 3, Schilling discloses overlaps (58) of the textile product are located at the parting lines and engage with each other when the cup segments are folded in (Fig. 2, Col. 7 Lines 42-49).
10. Regarding Claim 4, Schilling discloses the overlaps consist of a lowered flattened area and a projecting flange; the flange is at the edge of the parting line and the flattened area is at the edge of the adjacent cup segment (Fig. 2).

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11. Regarding Claim 5, Schilling discloses the edges of the parting lines and/or the overlaps are held permanently together by a binder (Col. 2 Lines 42-46, Col. 7 Lines 35-39).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

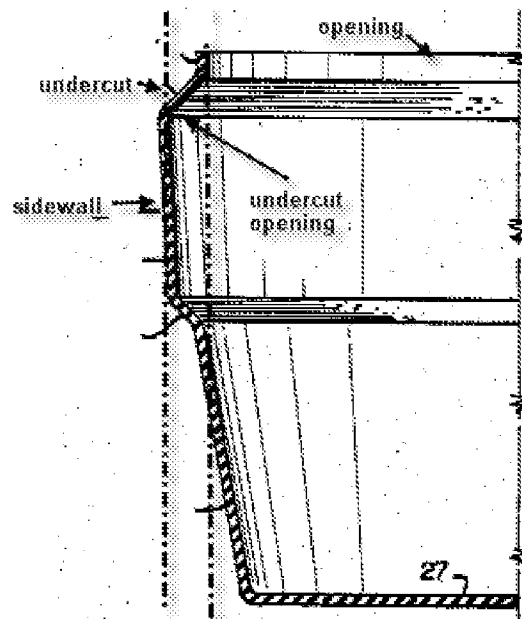
13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. **Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schilling as applied to claim 1 above in view of Best (3,378,616).**

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15. Regarding Claim 6, Schilling discloses all the limitations substantially as claimed, as applied to claim 1 above. Schilling does not expressly disclose the features of claim 6; however, the patent to Best – a method of making thin-walled containers – discloses a cup wherein the side wall (**Best**, 33) is undercut (**Best**, 35) at least in a certain area; and in that the undercut side walls lead to a bottom, which is wider, at least in a certain area, than the open width of the cup opening (**Best**, Fig. 10). It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the sidewall in the Schilling foldable container to have an undercut leading to an area wider than the opening of the container, as suggested by Best, as "The two latter features effectively reinforce the opening of the container" (**Best**, Col. 3 Lines 44-45).



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16. Regarding Claim 7, Schilling in view of Best discloses all the limitations substantially as claimed, as applied to claim 6 above; further, Best teaches the undercut of the sidewall (**Best**, 35) is produced by a bulged-out area of the cup (**Best**, Fig. 10).

17. Regarding Claim 8, Schilling discloses all the limitations substantially as claimed, as applied to claim 1 above. Schilling does not expressly disclose the features of claim 8; however, the patent to Best teaches an opening of a cup that is surrounded by a flange (**Best**, 35) that is at an angle to the sidewall of the cup (**Best**, Fig. 10). It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the sidewall in the Schilling foldable container with a flange surrounding the opening of the container, as suggested by Best, which "increases the strength and rigidity of the mouth portion of the container" (**Best**, Col. 5 Lines 2-3).

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited for prior art considered relevant to this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax

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phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Examiner, Art Unit 3781

/Anthony D Stashick/
Anthony D Stashick
Supervisory Patent Examiner, Art
Unit 3781